IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1597 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NAVNITLAL S SHAH SHAH TRANSPORT

Versus

SAURASHTRA RACHNATMAK SAMITI

Appearance:

M/S NJ MEHTA ASSO. for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 17/02/2000

ORAL JUDGEMENT

The appellant (Original defendant) has challenged the judgment and decree dated 30.4.79 passed in Special Civil Suit No. 7/1976 by the learned Civil Judge (SD) Bharuch, whereby the learned judge was pleased to pass the decree in the sum of Rs. 26,306/ together with running interest at the rate of 6% per annum from the

date of the suit till the amount is realised from the defendant.

The respondent no. 1 is the society registered under the Societies Registration Act, 1860, having it's authority for the filing of the suit vested in the Secretaries mentioned in the cause title of the plaint. The respondent no. 2 is the nationalised Insurance Company limited registered under the Companies Act; through which the earstwhile Concord of India Insurance Company Limited now stands managed and merged by the statute, and, therefore, all the rights and the liabilities of the above Insurance company vests the respondent no. 2-Insurance Company. It was their case that the appellant is doing his business as common carier in the name and style of Shah Transport. On 12.2.1973, the respondent no. 1 despatched by land through the appellant from Palej 50 full pressed bales of Digvijay Cotton consigned to Messers Pandya Khadi Karalaya, Chalala. It was alleged that the respondent no. 1 who is the owner entrusted the above consignment to the appellant in good order and condition at Palej for carriage by road from Palej to Chalala with instructions to deliver the same in like good order and condition to the above consignor. They further alleged that the appellant issued consignment note or Lorry Receipt No. 232, dated 12.2.1973 acknowledging the receipt of the said consignment in good order and condition having undertaken to carry and transport the same by road from Palej to Chalala and to deliver the same to the above consignee. The respondent no. 1 being the owner of the said consignment, he has insured the above consignment with respondent no. 2. It was further the case of the respondents that the above consignment of the Fifty bales of cotton was being carried in truck no. GTG 1247, and at that time the above consignment caught fire in the transit near Dholka. On receipt of the information about the fire, the above Insurer arranged survey by their Surveyors Messers Kapadia Brothers, who surveyed the said consignment at Dholka on 16.2.1973 and they issued their survey report on 23.2.1973. The above consignment was badly burnt and/or damaged in fire and that the above damaged consignment was useless for the respondent no.1 or the consignees and so the same was sold as Salvage. The respondent no. 1 refused to take salvage at the highest offer of Rs. 34000/. The value of the suit consignment was Rs. 60,936/ and that the value of salvage was of Rs.34000/, and therefore, the respondents had to incurred expenses of Rs. 450/, the details of which are shown in the plaint. They further alleged that the so the respondents sustained loss of Rs. 27,386, the

Insured's share of loss of due to under Insurance comes to Rs.780/, and so net total loss comes to Rs. 26,606/. The respondent no. 1 served notice to the appellant to pay up the loss suffered by them. In substance, it is the case of the respondents that the appellant being common carrier by road for hire of goods from place to place by land in India for all persons and that the appellant accepted the above consignment for carriage and deliver as aforesaid and so he therefore, acted as common carrier and, since the appellant failed and neglected to deliver the above consigment at the destination station and that the respondents suffered the above loss and damage and therefore, the appellant is liable to make good the loss and damage sustained by the respondents.

The appellant (orignal defendant) appeared in response to the summons served to him and filed written statement at Exh. 12 denying the claim of the respondents. It is the case of the appellant that he is making arrangments of the transport of the goods on commission basis and that so there is no contract of carrier between the parties.According to the appellant, M/s. Pandya Khadi Karyalaya, Chalala is one of the branch office of the respondent no. 1 and that the respondent no. 1 informed him to make arrangements for transport of 50 bales of cotton from Palej to Chalala for delivering them to M/s. Pandya Khadi Karyalaya, Chalala. According to appellant, he has made arrangements to transport of the goods in truck no. GTG 1247 and that in this transaction he had to charge commission of Rs. 31/. According to appellant, he is not the common carrier in the above transaction. According to him, he made arrangements for transport of the goods and he informed about it to the respondent no. 1 and that thereafter the respondent no. 1 handed over the suit goods to the owner of the above truck and, thereafter the above goods were transported in the above truck. In substance, it is the case of the appellant that respondent no. 1 has not delivered the above stated goods to him at Chalala. He had only made arrangement for the vehicle and except that he has not to do anything. In view of this,he has denied his liability to make good of the loss sustained by the respondent.

On the basis of the pleadings, the learned trial judge framed issues at exh. 14 and after considering and appreciating the evidence on record, has recorded a finding that the respondent no. 1 has delivered the consignment to appellant on terms and conditions as alleged in para-2 of the Plaint, and that the damage to the extent of Rs. 26,606/ was caused to the respondent

which was on account of neligence or misconduct on the part of the appellant and, therefore, the appellant is liable to pay Rs. 26,606/ to the respondents.

Mr. Salin Mehta, learned advocate appearing for the appellant after inviting my attention to the evidence on record has fairly stated that he is not in a position to challenge the damage to the extent of Rs. 26,606/ caused to the appellant, however, he has challenged the finding recorded by the trial court, namely, that the appellant is liable to pay Rs. 26,606/ to the respondents. According to Mr. Mehta, the appellant is simply making the arrangements for transport and that he only charges commission for making the above arrangement and, therefore, he is not a common carrier. In order to appreciate the contention advanced on behalf of the appellant, it is necessary to refer to the certain provisions of the Carriers Act, 1865. The expression "Common Carrier" is defined in Section -2 of the said Act, which reads as under:

> "common carrier" denotes a person, other than the Government, engaged in the business of trnasporting for hire property from place to place, by land orinland navigation, for all persons indiscriminately."

It also defines "person" includes any association or body of persons, whether incorporated or not. Section-8 & 9 of the Act,which are also relevant, reads as under:

Section-8:

> Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss or damage to any property delivered to such carrier to be carried where such loss or damage shall have arisen from the criminal act of the carrier or any of his agents or servant [and shall also be liable to the owner for loss or damage to any such property other than property to which the provisions of section 3 apply and in respect of which the declaration required by that section has not been made, where such loss or damage has arisen from the negligence of the carrier or any of his agents or servants.]

Section-9:

> In any suit brought against a common carrier for the loss, damage or non-delivery of goods entrusted to him for carriage, it shall not be

necessary for the plaintiff to prove that such loss, damage or non-delivery was owing to the negligence or criminal act of the carrier, his servants, or agents.

Reading the aforesaid provisions, it is clear that a carrier to be a common carrier must be engaged in carriage and transport or goods for hire as a business and not as a casual occupation. Every common carrier shall be liable to the owners for the loss or damage to any property delivered to such carrier to be carried where such loss or damage shall have arisen from the criminal act of the carrier or any of his agents or servants, and shall also beliable to the owner for loss or damage to any such property.

In any suit brought against a common carrier for the loss, damage or non-delivery of goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents. Section-9 relieves the plaintiff from burden of showing that the loss or damage or non-delivery was owing to any negligence or criminal act of the carrier, his servants or agents. It is, thus, obvious that the liability of the common carrier is that of insurer. Even if, there is no negligence on the part of the carrier, he is liable to compensate the owner of the good for the loss of the goods that agreed during the transit.

Reverting back to the merits of the case, it is not in dispute that on 12.2.1973 the appellant transported the suit goods vide Consignment Note Exh. 23. It is not in dispute that the consignment note Exh. 23 was issued by the appellant. It is clear from the consignment note that the respondent no. 1 as a consigner gave 50 bales of cotton to the appellant-defendant for transporting them from Palej to M/s. Pandya Khadi Karyalaya, Chalala, who is consignee. It is clear from the consignment note Exh. 23 that the respondent no. 1 has to pay freight of Rs. 525/ to the appellant for transporting of his suit goods. Reading Exh. 23, it is clear that there is nothing in this consignment note Exh. 23 to show that the appellant had made only arrangements for transporting the suit goods and, that he was to be paid only commission. Mr Mehta, learned advocate for the appellant after inviting my attention to the deposition Exh. 88 of the appellant and submitted that the appellant was not having truck and was not the owner of the Truck No. GTG 1247. The appellant

has further deposed that one Mr. Umedbhai was the driver of the truck and that he does not know Narendrabhai of Karamsad, who is said to be the owner of the said truck. He has further deposed that on 12.2.1973 he came to his office for inquiry as to whether he has got any goods for transporting at any other place. He told Umedbhai that respondent no. 1 wants to transport the goods to Chalala, and that the hire charge amounting of Rs. 525/ would be paid. He had to charge commission of one Anna per Rupee in this transaction. He was paid Rs. 31/ by way of commission. The man of the respondent no. 1 was present when the above talk took place. In the cross-examination, he stated that he is doing the transport business since last 10 to 12 years. He is doing the business of full truck load. He issues receipt to the parties.He keeps receipt books in duplicate. He is not charging commission from any consignor. Reading the evidence of the appellant-defendant, it is evident that the appellant is not the owner of the above truck, however, he is doing the business of carriage and transport of goods for hire. His above business is not a casual business. He is engaged in the business of transporting the goods from place to place by land for all persons indiscriminately. In this view of the matter, I am of the opinion that the appellant is a common carrier. True, the appellant had received Rs. 31/ by way of commission as can be seen from the entry from his books of account Exh. 30, and this commission was paid by the owner of the truck. However, in view of the fact that the appellant had issued consignment note Exh. 23 to the respondent no. 1 whereby the respondent no. 1 entrusted the suit goods to the appellant for transporting them to chalala and that the respondent no. 1 had to pay freight amounting to Rs. 525/ to the appellant. There is nothing in this consignment note Exh. 23 to show that the appellant has made only arrangements for the transport of the goods for the respondent no. 1 and, that the appellant was to get commission of Rs. 31/.The consignment note Exh. 23 also provides that in case, the goods are not delivered to the proper person and are not delivered at the correct address, than the appellant will be responsible for the same. This would go to show that the appellant is the common carrier and he is not the person who has made arrangements for transport of the goods only on commission basis, and that the driver and the owner of the truck were the agents of the appellant. In this view of the matter, I am of the view that the appellant is liable for the loss and damage which was caused to the suit goods as he is the common carrier and, therefore, he is liable to compensate the owner of the goods for the

loss of the goods that has occurred during the transit. In my opinion, the learned trial judge was perfectly justified in passing the decree to the extent ofRs. 26,606/ against the appellant.

In view of the above discussion, I see no merits in this appeal. There being no substance in this appeal, it is dismissed. In view of the fact that though the respondents are served, have not appeared.Hence, there will not be any order of the costs.

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